

FORM TO BE USED BY A PRISONER IN FILING A CIVIL RIGHTS COMPLAINT

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

EM-7210

(Inmate Number)

DARYL SMITH

(Name of Plaintiff)

SCI-Dallas 1000 Follies Road

(Address of Plaintiff)

Dallas, Pennsylvania 18612-0286

vs.

Atlas Fitness Incorporation Systems,

Ballys Fitness, et al., [and others]

(Name of Defendants)

1: CV- 10-1021

(Case Number)

COMPLAINT

FILED
WILLIAMSPORT, PA

MAY 12 2010

MARY E. D'ANDREA, CLERK
Per Deputy Clerk

TO BE FILED UNDER: ☒ 42 U.S.C. § 1983 – STATE OFFICIALS
☐ 42 U.S.C. § 1331 – FEDERAL OFFICIAL

I. Previous Lawsuits

A. If you have filed any other lawsuits in federal court while a prisoner please list the caption and case number including year, as well as the name of the judicial officer to whom it was assigned:

None.

II. Exhaustion of Administrative Remedies

A. Is there a grievance procedure available at your institution?

☒ Yes ☐ No

B. Have you filed a grievance concerning the facts relating to this complaint?

☐ Yes ☒ No

If your answer is no, explain why not Not applicable to out of state.

C. Is the grievance process completed? ____ Yes ____ No * Not Applicable.

III. Defendants

(In Item A below, place the full name of the defendant in the first blank, his/her official position in the second blank, and his/her place of employment in the third blank. Use Item B for the names, position and places of employment of any additional defendants.)

A. Defendant Atlas Fitness Incorporated Systems is employed
For-Profit 2800 Cindel Drive, Riverside, NJ 08075
 as _____ at Phone No., (856) 303-0050.

B. Additional defendants Bally's Fitness [and Joe Lucas]
45 East 55th. Street, New York, NY 10022
Phone, No. (212) 688-6630

NOTE: Additional Defendants may be included, once Discovery
 is completed, and/or a Lawyer amends this Complaint.

IV. Statement of Claim

(State here as briefly as possible the facts of your case. Describe how each defendant is involved, including dates and places. Do not give any legal arguments or cite any case or statutes. Attach extra sheets if necessary.)

1. The Defendants knowingly and maliciously placed the Plaintiff

in serious risk of injury or death, when they compelled him to deliver
a 1100 pound weight machine into a place that was not equipped to handle
such a massive load. As a result around June 20, 2008 while installing

the weight machine, the Plaintiff and the weights fell through the steps
with the machine falling on top of the Plaintiff, causing serious and
permanent damage. Prior to attempting the move, the Plaintiff called
his Employer, Todd on a phone and explained the machine was too heavy.
Todd disregarded the high risk and ordered the delivery anyway. After
being crushed by the 1100lbs., in New Jersey his Employer denied him
proper medical care, and had the Plaintiff transported from New
York, across state line, to a Hospital in New Jersey. Todd will be
an additional Defendant, once Discovery is completed and his full
name is known.

The Defendants were deliberately indifferent to a serious risk and need.
And their actions (and inactions) deprived the Plaintiff of his U.S.
Constitutional rights to be secure in his person, cruel and unusual
punishment, Equal protection, Privilege and fundamental fairness.

3. _____

V. Relief

(State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.)

1. Appoint Counsel;

Pool a Jury trial;

Award the Plaintiff any and all Punitive and Compensatory damages, the Jury agrees upon;

Order the Defendants to pay such awards within 90-days of the Judgment, (including any Attorney, Court and other fees directly related to this Civil Action.

2.

3.

Signed this 30 day of April, 2010.


(Signature of Plaintiff)